



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

BRUCE E. SABBITT  
ATTORNEY GENERAL

*Ed Wright*

November 29, 1977

Lt. G.S. Phelps  
Business Manager for  
the Law Enforcement Merit  
System Council  
2310 North 20 Avenue  
Phoenix, Arizona 85009

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Re: 77-224 (R76-499)

Dear Lt. Phelps:

You have asked whether the Merit System Council may exempt positions other than the superintendent from its classification and promotional plan.

A.R.S. § 28-235 (C)(3)(a) provides:

The council shall:

\* \* \*

3. Pursuant to recognized merit principles of public employment, from time to time:

(a) Classify or reclassify all positions in the department of public safety, from a list of necessary employees prepared by the director.

A.R.S. § 41-1713(A)(2) provides the powers and duties of the Director of the Department of Public Safety. It states in part:

" . . . He shall determine and furnish the merit system council with a table of organization, . . . "

Lt. G. S. Phelps  
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2.

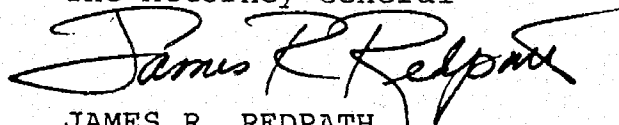
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It is apparent that the Legislature intended that the Merit System Council must classify all positions on the list of necessary employees provided by the Director of the Department of Public Safety.

In light of the mandatory language of A.R.S. § 28-235(C)(3)(a), any positions exempted from the classification and promotional plan would have to be exempted by the Legislature, not the Merit System Council. The Merit System Council is not granted any discretion to exclude positions from the classification system. Statutory exemption from the merit system is provided by the Legislature for such positions as the Director and the superintendent of each division. A.R.S. §§ 41-1711.D and 41-1713.A.2. However, every position not exempted by the Legislature and which is designated as a "necessary" position by the Director must be included by the Merit System Council in its classification system.

Sincerely,

BRUCE E. BABBITT  
The Attorney General

A handwritten signature in dark ink, appearing to read "James R. Redpath", written over the typed name.

JAMES R. REDPATH  
Assistant Attorney General

JRR:hc